

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1384

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

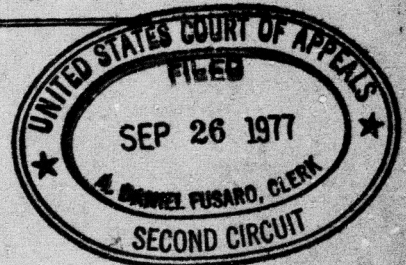
DOCKET NO. 77-1384

IN THE MATTER OF:
THOMAS A. LIBERATORE

B
P/S

ON APPEAL FROM THE SUBSTITUTE ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX TO BRIEF FOR
THOMAS A. LIBERATORE



JON C. BLUE
LEGAL ASSISTANCE TO PRISONERS
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ATTORNEYS FOR THOMAS A. LIBERATORE

PAGINATION AS IN ORIGINAL COPY

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0-Rev. Civil Docket Continuation

E	PROCEEDINGS	Date Order or Judgment Noted
	In the Matter of: THOMAS A. LIBERATORE	
	Richard Cramer	
	Assistant Federal Public	
	Defender	
	450 Main St.	
	Hartford, Conn. 06103	
	Thomas Smith, Assistant U.S. Atty	
	450 Main St.	
	Hartford, Conn. 06103	
	Jon C. Blue (T.Liberatore)	
	Legal Assistance to Prisoners	
	Room 101	
	340 Capitol Ave.	
	Hartford, Conn.	

A

Hn-57

DATE 1977	PROCEEDINGS	Date Judge
6-14	1. Application for Writ of Habeas Corpus Ad Testificandum and ORDER Clarie, J. m6-17-77. Two true-attested copies handed to Marshal for service.	
6-29	2. Hearing re: Application for Order Compelling Handwriting Samples and Fingerprints. Application for Order to Compel Handwriting Samples and Major Case Prints (Fingerprints) re: Liberatore filed; Affidavit in Support of Application for Order Compelling Witness to Provide Handwriting Samples and Major Case Prints (Fingerprints) re: Liberatore filed. Court Exhibit A entered. Jerome Misiewicz sworn and testified. The Court finds Thomas A. Liberatore in contempt of Court for refusing to comply with Grand Jury's request for information. Mr. Liberatore is committed by the Court to state prison as a federal prisoner, with Attorney General's approval, for the duration of the term of Grand Jury 77-1 or until Grand Jury's request is complied with.	
6-29	Order re: commitment. Clarie, J. m7-8-77.	
7-7	3 Marshal's return showing service of ORDER (Commitment) on 7/7/	
7-28	4 Appearance of Jon Blue entered for Mr. Liberatore.	
7-29	5 Memorandum of Law for Witness Liberatore.	
8-2	6 Substitute Order - Clarie, J. m8-5-77. Copies mailed.	
8-24	7 Motion to Proceed on Appeal in Forma Pauperis filed by Thomas Liberatore. 'MOTION GRANTED, JON m8/24/77. Copies mailed to counsel.	
"	8. Affidavit of Thomas Liberatore filed.	
"	9. Notice of Appeal filed. Copies to counsel. Civil Management Plan and Forms C & D handed to Atty Cramer. Attested copies of appeal and docket entries mailed to U.S. Court of Appeals and New Haven.	
8/30	Transfer to Civil No. H-77-433.	

True Copy

ATTEST

CLERK OF COURT

CLARK, J. S. District Court

BY

Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

CIVIL ACTION
H-77-433

In the matter of:

Contempt Proceedings.

THOMAS A. LIBERATORE

June 29, 1977

Before: HON. T. EMMET CLARIE, CHIEF JUDGE

A p p e a r a n c e s:

For the United States of America:

THOMAS P. SMITH, ESQ.
Assistant U.S. Attorney
450 Main Street
Hartford, Connecticut

For Thomas A. Liberatore:

RICHARD CRAMER, ESQ.
Assistant Public Defender
450 Main Street
Hartford, Connecticut

Elliott Sperber
Official Court Reporter
District of Connecticut

1 MR. SMITH: Good afternoon, your Honor. Your
2 Honor, the grand jury has been meeting in Hartford all
3 this day, and has been considering a number of matters, one
4 of which is a matter of Thomas A. Liberatore.

5 The grand jury is presently investigating
6 several possible violations of Federal law by Mr. Liberatore --
7 I believe that is the correct pronounciation, "Liberatore" --
8 pursuant to a grand jury subpoena, he was brought before
9 the grand jury today and was asked by the Foreman of the
10 grand jury to provide samples of his handwriting, and also
11 his fingerprints.

12 I would like to file with the Court my affidavit
13 in support of an application for an order compelling Mr.
14 Liberatore to supply the handwriting and the fingerprints,
15 which he has refused to supply.

16 THE COURT: Is he here in Court today?

17 MR. SMITH: Yes, your Honor, he is represented
18 by Mr. Cramer. I would also like to file --

19 THE COURT: Mr. Cramer, for the record, have
20 you been appointed to represent this young man?

21 MR. CRAMER: I have not been formally appointed
22 to represent him, your Honor.

23 THE COURT: The Court so formally appoints you
24 at this time.

25 I assume, Mr. Liberatore, you have no funds to
COTTON CLOTHING

1 retain your own counsel?

2 MR. LIBERATORE: No, I don't.

3 THE COURT: The Public Defender will represent
4 you.

5 MR. SMITH: May I file my affidavit in support
6 of an order compelling Mr. Liberatore --

7 THE COURT: It may be filed.

8 MR. SMITH: -- to supply samples of his hand-
9 writing and fingerprints.

10 I also have an application for an order
11 compelling Mr. Liberatore to supply major case fingerprints
12 and handwriting samples.

13 And, finally, I have a proposed order from the
14 Court, compelling Mr. Liberatore to give us the handwriting
15 samples and his fingerprints.

16 I also have present in court, your Honor, the
17 Foreman of the grand jury and the stenographer, and if
18 your Honor desires they can be put on the stand and
19 questioned as to Mr. Liberatore having been put under oath,
20 having been advised of his rights, having refused to comply
21 with the direction of the Foreman of the grand jury to
22 provide samples of his fingerprints and handwriting. They
23 can also testify I believe that additionally Mr. Liberatore
24 indicated it was his intent not to supply samples of his
25 handwriting or fingerprints, no matter what the Court

1 directed.

2 THE COURT: How much longer a period does the
3 grand jury have to sit?

4 MR. SMITH: I believe approximately nine months,
5 your Honor.

6 THE COURT: Counsel for Mr. Liberatore, do you
7 want to make a statement as to what his position is, so we
8 understand basically what is transpiring here?

9 MR. CRAMER: You are asking me for the position
10 of Mr. Liberatore at this time, your Honor?

11 THE COURT: Yes.

12 MR. CRAMER: His position is that he will not
13 furnish either a handwriting exemplar or major case prints,
14 regardless of the order of the Court. I've discussed it
15 with him at some length.

16 THE COURT: Have you advised him what the law
17 is?

18 MR. CRAMER: Yes, I have, your Honor.

19 THE COURT: Have you explained to him that if he
20 doesn't do so the Court will necessarily have to find him
21 in contempt of court?

22 MR. CRAMER: I've explained to him and he under-
23 stands that.

24 THE COURT: How much time is he serving now?

25 MR. CRAMER: He's serving two consecutive one

1 year sentences, which as I understand it expire, with good
2 time, in January?

3 MR. LIBERATORE: Yes.

4 MR. CRAMER: In January of 1978.

5 THE COURT: Have you explained to him in the
6 event that he refuses to comply with the Court's order the
7 Court will commit him for the term of the grand jury being
8 in session, and that will suspend, under the order, the
9 running of his State time, so that he couldn't possibly
10 be released until nine months after his normal release,
11 at the earliest?

12 MR. CRAMER: I've explained that to him, and I
13 believe he understands it.

14 THE COURT: He understands it?

15 MR. CRAMER: My only objection, for the record,
16 I feel obligated to make this for the record: while the
17 primary objections -- there is an affidavit submitted by
18 the Government and apparently there has been a refusal
19 by Mr. Liberatore to give either handwriting samples or
20 major case prints. I'm concerned with the necessity of
21 these.

22 THE COURT: I think your point is well taken.
23 That's why I'm going to ask the Prosecutor to submit and
24 put on the record the witnesses needed for his handwriting
25 samples and the need for his fingerprints. The exception,

1 as counsel well knows, I think there is a case in Mississippi
2 where they corraled a few hundred people for fingerprints,
3 and they said that was improper.

4 So if the Prosecotor can center on the reason
5 why they need his fingerprints, then it will be in order.
6 So I'll leave that up to the Prosecutor.

7 MR. SMITH: May I proceed, your Honor?

8 The Government calls Jerome Misiewicz.

1 J E R O M E M I S I E W I C Z, appearing as
2 a witness, being duly sworn, testified as follows:

3 THE CLERK: Please give your name and
4 address for the record.

5 THE WITNESS: Jerome Misiewicz, 4 Revere
6 Drive, Bloomfield, Connecticut.

7 DIRECT EXAMINATION BY MR. SMITH:

8 Q Mr. Misiewicz, are you currently Foreman of the
9 grand jury here in Hartford?

10 A Yes, I am.

11 Q Were you serving in that capacity today?

12 A Yes, I am.

13 Q Do you see in the courtroom a gentleman by the
14 name of Thomas Liberatore?

15 A Yes, I do.

16 Q Do you know whether Mr. Liberatore was produced
17 before the grand jury pursuant to a grand jury subpoena?

18 A Yes, he was.

19 Q And did that grand jury subpoena direct that he
20 provide samples of his fingerprints and handwriting?

21 A No, it did not.

22 Q The subpoena?

23 A Oh, yes.

24 Q Were the fingerprints and handwriting of Mr.
25 Liberatore requested pursuant to an investigation which is

1 presently being conducted by the grand jury of which you
2 are the Foreman?

3 A That's correct.

4 Q And can you tell us, without going into a great
5 deal of detail, what evidence has been presented before the
6 grand jury? Without mentioning the names of people who
7 might have testified in connection with this investigation --
8 can you tell us basically what type of case it is?

9 A Well, actually, it is two counts. The first is the
10 theft of Government checks, two checks, and the second is the
11 possible forgery of signatures on these checks that were
12 cashed.

13 Q Was there evidence presented before the grand
14 jury, Mr. Misiewicz, which leads you to believe that it is
15 necessary and essential to the grand jury's investigation
16 that Mr. Liberatore provide the grand jury with samples
17 of his handwriting and with his fingerprints?

18 A Yes. It was.

19 Q Now, Mr. Liberatore appeared before the grand
20 jury today, correct, Mr. Misiewicz?

21 A That is correct.

22 Q Was he placed under oath?

23 A Yes, he was.

24 Q Was he advised of his rights by me?

25 A Yes.

1 THE COURT: Excuse me, placed under oath by
2 yourself?

3 THE WITNESS: Yes, your Honor, he was placed
4 under oath by me.

5 THE COURT: Very well.

6 Q Was he advised of his rights prior to any question
7 by myself?

8 A Yes, he was.

9 Q Now, was Mr. Liberatore directed by you to
10 provide samples of his handwriting?

11 A Yes, sir.

12 Q And his fingerprints?

13 A That's correct.

14 Q And did Mr. Liberatore indicate whether he would
15 comply with your directions?

16 A At the time we directed him he said no.

17 Q Was Mr. Liberatore asked whether he would comply
18 with the direction of His Honor?

19 A Yes, he was.

20 Q What did Mr. Liberatore say?

21 A He said he would refuse at that time also.

22 Q Do you recall whether Mr. Liberatore was specific-
23 ally asked by anyone in that room whether it was his intent
24 to defy the order of the United States District Court?

25 A Yes, the District Attorney.

1 Q And what was Mr. Liberatore's response?

2 A He said he would refuse.

3 Q In your judgment, and in the judgment of the
4 other members of the grand jury, are handwriting samples
5 from Mr. Liberatore and his fingerprints essential to the
6 investigation?

7 A Yes, we do feel they are essential.

8 MR. SMITH: I have no further questions.

9 THE COURT: Any questions, Counselor?

10 MR. CRAMER: Yes, your Honor.

11 CROSS EXAMINATION BY MR. CRAMER:

12 Q You said that Mr. Liberatore refused to give
13 handwriting samples and fingerprints; is that correct?

14 A That's correct.

15 Q Didn't he say he refused because he felt he had
16 a right to refuse under the Fifth Amendment?

17 A He did use the Fifth Amendment, yes.

18 Q And you also stated that it was essential to the
19 investigation of this particular case. Why do you feel it is
20 essential?

21 MR. SMITH: I object, your Honor. That's
22 probing into something that the grand jury is
23 lawfully investigating. There is a presumption
24 of lawfulness on the part of the grand jury. The
25 Foreman is here; he's been placed under oath;

1 he's told the Court it is a check case. And I
2 think to go beyond that is to allow this hearing
3 to be transformed into a discovery proceeding,
4 which Mr. Cramer would not have the right to
5 have if the case had proceeded to indictment.

6 I don't think Mr. Liberatore ought to be able
7 to enhance his rights and get greater discovery
8 rights by defying a lawful Court order than he
9 could otherwise get by complying with it.

10 That's an anamoly; I object to the question.

11 THE COURT: The Court will allow this area:
12 is this the only witness who has been subpoenaed
13 in for this purpose, to ascertain handwriting and
14 fingerprints, to your knowledge?

15 Can you answer that question?

16 THE WITNESS: Yes, your Honor. He has been
17 the only witness who has been requested for
18 fingerprints.

19 THE COURT: So this is not sort of a catch-
20 all type of subpoena, where multiple people were
21 subpoenaed in, on a general, unlimited basis,
22 asking for their fingerprints and handwriting;
23 but a specific person?

24 THE WITNESS: That person, yes.

25 BY MR. CRAMER:

NEW YORK

1 Q Well, sir, have other people at this grand jury
2 testified that Mr. Liberatore signed these checks or had
3 these checks in his possession?

4 MR. SMITH: Again, your Honor, again I
5 object. That's probing.

6 THE COURT: Sustained.

7 MR. CRAMER: Well, I won't pursue this
8 area further, but for the record I would offer
9 that I would prove through questions that there
10 was other evidence available to the grand jurors
11 from which they can return an indictment, and
12 perhaps even come close to sustaining a burden
13 of reasonable doubt in a case against Mr.
14 Liberatore.

15 THE COURT: That's a decision they have to
16 make.

17 Is your position the same as that of the
18 other grand jury members?

19 THE WITNESS: Yes, your Honor.

20 THE COURT: Very well.

21 BY MR. CRAMER:

22 Q Well, would it be fair to say, sir, that without
23 these fingerprints and without this handwriting you can
24 not return --

25 MR. SMITH: Objection.

1 THE COURT: Sustained.

2 Q Do you know, sir, whether there are any finger-
3 prints or handwriting samples of Mr. Liberatore any place
4 else?

5 MR. SMITH: Objection.

6 MR. CRAMER: That goes to the essentiality
7 and necessity of these particular documents.

8 THE COURT: Sustained.

9 MR. CRAMER: I have no further questions, your
10 Honor.

11 THE COURT: Anything further?

12 (Witness excused)

13 MR. SMITH: Your Honor, does the Court desire
14 me to call the stenographer, or will the Court
15 rely on Mr. Cramer's stipulation, upon my representa-
16 tion as to what Mr. Liberatore said? Whichever
17 the Court would prefer, and Mr. Cramer's preference.

18 THE COURT: Do you have a copy of the subpoena?

19 MR. SMITH: I do not have it with me, your
20 Honor.

21 THE COURT: Will you get that and file it as
22 an exhibit, please?

23 MR. SMITH: Does the Court want me to proceed
24 with the examination of the stenographer?

25 THE COURT: Not unless you want to; I have

1 heard enough of the case.

2 MR. CRAMER: I don't require it, your Honor.
3 Unless Mr. Smith has anything else, I would make an
4 offer of proof, and the questions I would ask, and
5 I expect Mr. Smith would object to and the Court
6 would sustain -- but I want to make the offer anyway,
7 and that's all I have.

8 THE COURT: It should be placed in the record
9 that the witness is the Foreman of the grand jury;
10 is that correct?

11 THE WITNESS: That's correct, your Honor.

12 THE COURT: Very well, nothing further. The
13 witness is excused.

14 Has counsel seen the subpoena?

15 MR. CRAMER: No, I have not seen it.

16 THE COURT: Court Exhibit A, without objection.

17 MR. CRAMER: No objection.

18 THE COURT: Any offer that counsel wants to make
19 on the record at this time?

20 MR. CRAMER: Yes, your Honor, we could offer
21 evidence that there is an abundance of samples of
22 Mr. Liberatore's handwriting. Mr. Liberatore is
23 presently confined at Somers, and he informs me
24 that his handwriting samples are available in many
25 files at the prison, as well as the fingerprints.

1 He's been arrested a number of times, and convicted
2 of a number of times, and there is no shortage of
3 his fingerprints any place.

4 As to the essentiality and necessity of taking
5 his prints or handwriting today it would seem to be
6 unnecessary because of his past criminal record.

7 MR. SMITH: In response to that I would like
8 to say in respect to the handwriting samples we have
9 here agents of the Secret Service who want to take
10 Mr. Liberatore's handwriting on a standard Government
11 handwriting analysis form, which requires the person
12 who is being asked for a sample to write the
13 alphabet and to write numerals and a number of
14 letters, rather than select words which might appear
15 on the documents, which are submitted to other
16 agencies.

17 It makes it much easier to make an accurate
18 handwriting analysis. And we think accuracy is
19 important for two reasons: it is important to
20 safeguard the Government's interest and equally
21 important to safeguard the defendant's interest.
22 So a standard form sample is really required.

23 THE COURT: How about the fingerprints?

24 MR. SMITH: With respect to the fingerprints,
25 your Honor, we need major case prints, which include
the lobe of the thumb and the palm, which are not

1 available and which are not taken by local
2 police departments during a normal arrest.

3 MR. CRAMER: As to the fingerprints, your Honor,
4 I heard what Mr. Smith said; they need them, but
5 I would suspect and I would anticipate some testimony
6 from the agents that they have lifted a print from
7 one of these two checks in question, and that the
8 print is of the palm, and there is no print of the
9 fingers.

10 If there is prints of the fingers and they
11 have prints of the fingers available up at Somers,
12 and they match Mr. Liberatore's, there is absolutely
13 no need for his palm prints. If the print on the
14 check is only a print of the palm, I can see --
15 I concede they need a major case print, but if they
16 have a print of the finger and it matches the
17 prints, why go any further? It would be unnecessary.

18 MR. SMITH: Your Honor, the Government has
19 submitted the affidavit under oath. The Foreman
20 of the grand jury has testified under oath of the
21 necessity of the items that are requested.

22 Previously Mr. Liberatore claimed that he was
23 going to defy this Court's order on the basis of
24 the Fifth Amendment; now he is switching horses in
25 the middle of the stream and talking about necessity.

1 The fact of the matter is it is necessary,
2 your Honor; the grand jury is being immobilized while
3 Mr. Liberatore is in effect relying on a law which
4 does not apply, and now coming in before your Honor,
5 and he is obfuscating the issue and changing horses
6 in the middle of the stream.

7 We ask that the order at the request of the
8 Foreman of the grand jury be granted.

9 THE COURT: Very well. Suppose you have Mr.
10 Liberatore come forward, Counselor, so we can explain
11 this to him, if he doesn't already know.

12 As I understand it, Mr. Liberatore, you are
13 presently serving time at the State Prison at Somers,
14 and you will be released some time in what, December
15 of '77?

16 MR. LIBERATORE: January, your Honor.

17 THE COURT: January '78?

18 MR. LIBERATORE: Yes, January 24th.

19 THE COURT: And in this matter that the grand
20 jury has requested your samples of your handwriting
21 and samples of your fingerprints, it is incumbent
22 upon the Court, under the law, to order you to
23 comply.

24 And as I understand it, it is your intention,
25 even upon the order of the Court, not to comply;
is that correct?

1 MR. LIEBOWITZ: That's true, your Honor.

2 THE COURT: And do you understand you leave
3 the Court no alternative but to commit you for
4 contempt of Court during the term in which the grand
5 jury is sitting?

6 Now, I haven't figured it out, but the Prosecu-
7 tor tells me that is approximately nine months.

8 Now, under the law the situation arose for
9 example in Washington, the case of Gordon Liddy,
10 where he was held in contempt after he had been
11 sentenced, and the Court held that his sentence
12 suspend running while he was held in contempt, so
13 that it didn't count against his sentence.

14 That would mean to you that if you were held
15 in contempt and sentenced and you continued your
16 persistence during the life of the grand jury --
17 which has another nine months to run -- that during
18 the next nine months the time you'd be serving up
19 at Somers would not count against your State
20 sentence.

21 That may be argued by your counsel on appeal,
22 to its heart's content -- that is his privilege
23 and your privilege. But it is incumbent upon me
24 to explain that to you, so you wouldn't be taken
25 by surprise at the end of the time, when you
expect to be released.

1 I want to make that clear. Do you understand
2 that?

3 (Mr. Liberatore nodded)

4 THE COURT: The gentleman can't take that
5 down, just by nodding your head.

6 MR. LIBERATORE: Yes, your Honor, it is clear,
7 very clear.

8 THE COURT: You understand?

9 MR. LIBERATORE: Yes.

10 THE COURT: And do I understand then that you
11 refuse to give the requested handwriting samples to
12 the grand jury and the requested major case prints,
13 fingerprints, of your hands, as requested? Is that
14 correct?

15 MR. LIBERATORE: Correct, your Honor.

16 THE COURT: Very well. The Court will hold
17 you in contempt of Court by refusing to comply
18 with the grand jury's request for that information,
19 which the Supreme Court says you are obligated to
20 provide, and you will be sentenced and committed
21 at the State Prison, as a Federal prisoner, with
22 the Attorney General's approval, for the term that
23 this grand jury is sitting.

24 It may not exceed eighteen months -- as I
25 understand it, there are only nine months left, and

1 I want to advise you that at that time you could again
2 be brought before the grand jury, and if you again
3 persisted in refusing, and if it were new grand
4 jury that had eighteen months to run, you could again
5 be committed for another eighteen months.

6 Is that clear?

7 MR. LIBERATORE: Very clear, your Honor.

8 THE COURT: Very well. For your own information
9 I might help you and tell you that we had one
10 previous instance not too long ago where a man
11 who had allegedly held up a bank and was asked for
12 his fingerprints and handwriting, and he persisted
13 at first, and went to jail, and finally decided to
14 grant the information requested, and gave it to
15 them, and it turned out for one reason or another --
16 I don't know; he never was prosecuted. Apparently
17 it didn't mean too much, and in the meantime he
18 served time for nothing, merely because of his
19 obstinacy.

20 But that's the privilege you have. So it is the
21 order of the Court that you be found guilty of
22 contempt in the grand jury and of the Court, for
23 refusing to give the information requested, and
24 that you be committed as a Federal prisoner at the
25 State Prison, subject to the approval of the Attorney

1 General, during the term of the grand jury, or until
2 you comply.

3 Now, whether that's nine months or whether
4 that term will remain, or whether it is nine
5 minutes, or whether it is nine seconds, it is in your
6 hands to decide.

7 Is that clear to you?

8 MR. LIBERATORE: Yes, your Honor.

9 THE COURT: Very well. So ordered.

10 That is all.

11 MR. SMITH: Thank you, your Honor.

12 THE COURT: Nothing further at this time,
13 adjourn court, Mr. Bailiff.

14 (Whereupon the hearing was concluded)
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF CONNECTICUT

3 * * * * *

4 IN THE MATTER OF:

* Contempt Proceedings

5 THOMAS A. LIBERATORE

*

6 * * * * *

7
8 C E R T I F I C A T E

9
10 I hereby certify that the foregoing is a true and
11 correct transcript of my stenographic notes in the
12 above-entitled cause on June 29, 1977, before Hon.
13 T. Emmet Clarke, Chief Judge.

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17 Official Court Reporter
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: THOMAS A. LIBERATORE

AFFIDAVIT IN SUPPORT OF APPLICATION
FOR ORDER COMPELLING WITNESS TO PROVIDE
HANDWRITING SAMPLES AND MAJOR CASE PRINTS (FINGERPRINTS)

I, Thomas P. Smith, being duly sworn, depose and say:

1. I am an Assistant United States Attorney for the District of Connecticut.
2. I am acting for and with the approval of Peter C. Dorsey, United States Attorney for the District of Connecticut.
3. As part of my official duties, I am conducting proceedings before the Federal Grand Jury sitting at Hartford, Connecticut, which Grand Jury is inquiring into possible violations of federal criminal statutes, including, but not limited to Title 18, United States Code, Sections 495 (Forgery and Uttering) and 1708 (Possession of Stolen Mail).
4. THOMAS A. LIBERATORE was subpoenaed to appear and did appear before the Grand Jury on June 29, 1977 at which time he was directed to give and provide handwriting samples and major case prints (fingerprints).
5. THOMAS A. LIBERATORE, acting with advice of counsel, refused to give or provide handwriting samples or major case prints to the Grand Jury as directed. His refusal was based on claims under the Constitution of the United States.
6. The handwriting samples and major case prints are essential and necessary to the Grand Jury investigation and are to be used only as a standard of comparison in order to determine whether or not THOMAS A. LIBERATORE participated in the possession,

forgery, and uttering of two United States Treasury Checks, Nos. 23074236 and 26867527, which checks were, or are believed to have been, stolen from the mail.

THOMAS P. SMITH
Assistant United States Attorney

Subscribed and sworn to before me this _____ day of
June, 1977.

ROBERTA A. DEKAM
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: THOMAS A. LIBERATORE

ORDER COMPELLING HANDWRITING SAMPLES AND
MAJOR CASE PRINTS (FINGERPRINTS)

On application of Thomas P. Smith, Assistant United States Attorney, acting for and with the approval of Peter C. Dorsey, United States Attorney for the District of Connecticut:

And it appearing to the satisfaction of the Court:

1. THOMAS A. LIBERATORE was subpoenaed on June 29, 1977, before a duly constituted Grand Jury of the District of Connecticut sitting at Hartford, Connecticut.
2. That the Grand Jury is now investigating possible violations of Federal law, including but not limited to, Title 18, United States Code, sections 495 (forgery and uttering) and 1708 (possession of stolen mail).
3. That THOMAS A. LIBERATORE was requested and directed by the Grand Jury to provide handwriting samples and major case prints.
4. That THOMAS A. LIBERATORE (acting with advice of counsel) has refused to provide handwriting samples or major case prints on the basis of the Constitution of the United States.
5. That in the judgment of the United States Attorney and Thomas P. Smith, Assistant United States Attorney, handwriting samples and major case prints are essential and necessary to the Grand Jury investigation.

NOW, THEREFORE, IT IS ORDERED that the said THOMAS A. LIBERATORE give and provide handwriting samples as requested by the Grand Jury.

T. EMMET CLARIE
Chief United States District Judge

Dated: _____

FILED

JUN 29 5 20 PM '77

A. 28

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN THE MATTER OF:

THOMAS A. LIBERATORE

:

:

CIVIL NO. H-77-313

ORDER

This matter came before the Court on June 29, 1977, at which time the Court heard evidence of, and found, that the said THOMAS A. LIBERATORE was lawfully subpoenaed before a Grand Jury in Hartford, Connecticut, and was lawfully directed by the foreman of that Grand Jury to provide samples of his handwriting and major case fingerprints; which the Court found necessary for the lawful performance of the Grand Jury's duties in this matter; and that the said THOMAS A. LIBERATORE refused to provide said handwriting samples and major case fingerprints, after having lawfully ordered to do so;

and that the said THOMAS A. LIBERATORE appeared before this Court, and after having been advised that he would be held in contempt of Court upon his refusal to provide said fingerprints and handwriting samples, and after having been ordered by the Court to provide said samples, the said THOMAS A. LIBERATORE did refuse to comply with the Court's Order.

It is therefore the Judgment of this Court that the said THOMAS A. LIBERATORE is hereby declared in Contempt of Court and it is hereby ORDERED that he be committed to the custody of the Attorney General of the United States, with the recommendation that he be permitted to serve this sentence at a state institution, for the remainder of the term of the Grand Jury before which he appeared, said term to expire on April 13, 1978, or until the said THOMAS A. LIBERATORE shall purge himself of this Contempt by providing major case fingerprints and handwriting samples.

SO ORDERED:

A True Copy
ATTEST:

Dated at Hartford, Connecticut this 29th day of June, 1977.

SEYMOUR A. MATKOWSKI
Clerk, U. S. District Court

By: *Mary C. [Signature]*

[Signature]

T. EMMET CLARIE
Chief United States District Judge

FILED
AUG 2 3 03 PM '77

U.S. DISTRICT COURT
HARTFORD, CONN.

A. 29

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

IN THE MATTER OF:

:

Misc. Civil No. H77-5
CIVIL NO. -H-77-313

THOMAS A. LIBERATORE

:

SUBSTITUTE ORDER

This matter came before the Court on June 29, 1977, at which time the Court heard evidence of, and found, that the said THOMAS A. LIBERATORE was lawfully subpoenaed before a Grand Jury in Hartford, Connecticut, and was lawfully directed by the foreman of that Grand Jury to provide samples of his handwriting and major case fingerprints; which the Court found necessary for the lawful performance of the Grand Jury's duties in this matter and that the said THOMAS A. LIBERATORE refused to provide said handwriting samples and major case fingerprints, after having lawfully ordered to do so;

and that the said THOMAS A. LIBERATORE appeared before this Court, and after having been advised that he would be held in contempt of Court upon his refusal to provide said fingerprints and handwriting samples, and after having been ordered by the Court to provide said samples, the said THOMAS A. LIBERATORE did refuse to comply with the Court's Order.

It is therefore the Judgment of this Court that the said THOMAS A. LIBERATORE is hereby declared in Contempt of Court and it is hereby ORDERED that he be committed to the custody of the Attorney General of the United States, with the recommendation that he be permitted to serve this sentence at a state institution, for the remainder of the term of the Grand Jury before which he appeared, said term to expire on April 13, 1978, or until the said THOMAS A. LIBERATORE shall purge himself of this Contempt by providing major case fingerprints and handwriting samples.

It is the further judgment of this Court that the commitment herewith ordered shall, as of June 29, 1977, interrupt any credit received by the said THOMAS A. LIBERATORE on his sentence of September 16, 1976, to a two-year definite term imposed by the Court of Common Pleas for Geographical Area #1 at Stamford, and that credit on said sentence shall not resume until the commitment ordered under the judgment of this court shall expire.

SO ORDERED:

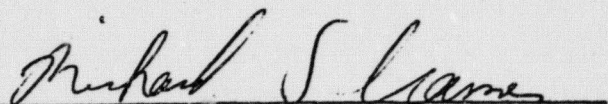
Dated at Hartford, Connecticut, this 2nd day of August 1977.



T. EMMET-CLARIE
Chief United States District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one copy of the foregoing Brief and Appendix for Appellant Thomas A. Liberatore was hand-delivered to the office of Thomas P. Smith, Esq., Assistant United States Attorney, 450 Main Street, Hartford, Connecticut 06103, and one copy was mailed, postage prepaid, to Hugh W. Cuthbertson, Esq., Assistant United States Attorney, Post Office Box 1824, New Haven, Connecticut 06508, this 23d day of September, 1977.


RICHARD S. CRAMER
Assistant Federal Public Defender